



Office of Local Programs

Process Review 96-05

Subcontracting - Contract Compliance

FINAL REPORT

Recommended Approval

Original Signed by John Garlock
Chief, Procedures Development Branch

Approved

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Assistant Program Manager
Design and Local Programs

September 4, 1997
(Date)

EXECUTIVE SUMMARY

FHWA's 1996 Project Review/Product Evaluation (PR/PE) for Subcontracting recommended that the Office of Local Programs (OLP) develop an ongoing contract compliance review program for monitoring prime contractor's certification. The review program would assure that the Federal requirements (Form FHWA-1273) is incorporated into all Federal-aid subcontracts and lower tier subcontracts. The review program would also assure that firms suspended, or debarred, from Federal-aid contracts are not able to continue to engage in working on Federal-aid projects through subcontracts. To comply with FHWA's recommendations, this process review was undertaken.

Process Review 96-05 entailed spot-checking of subcontracts, on local agency administered construction projects (in Districts 5, 7 & 12), to make sure Form FHWA-1273 was physically incorporated into the subcontract. A new approach was taken with this process review, instead of Caltrans' personnel doing the spot-checking, local agencies were responsible for spot-checking their contractor's files to assure that Form FHWA-1273 is included in all subcontracts. The local agencies selected were those that had on-going Federal-aid construction projects. The District Review Team members were responsible for determining which local agencies in their district would do the reviews and on which projects. A goal of 20 local agencies and 75 subcontracts to review was established in the beginning in the review plan. Nineteen local agencies and 84 subcontracts were reviewed:

These selected local agencies did check to see if the Form FHWA-1273 was physically incorporated into the subcontracts, then the local agency completed a review form checklist (copy attached) on their findings. If the Form FHWA-1273 was not physically incorporated into the subcontract, the local agency would be responsible for taking such necessary action to assure that the prime contractor and subcontractors comply with contract requirements.

Of the 19 local agency projects that were reviewed, five projects were found with the Form FHWA-1273 not included in the subcontracts. Of these five local agency projects, where the 1273 was not included in the subcontracts, two of the projects shared the same prime contractor. On one of the projects, the failure to include the 1273 was caused by the local agency not including the 1273 into the prime contract (The local agency executed a contract change order to correct their mistake).

Also, none of the prime contractors or subcontractors, involved in this process review, were found in U.S. General Services Administration "List of Parties Excluded From Federal Procurement and Nonprocurement Programs."

In light of the survey results and FHWA's recommendation, this process review should be conducted again next year in three different districts.

SUBCONTRACTING - CONTRACT COMPLIANCE

A. Background

The Form FHWA-1273, Required Contract Provisions, is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by FHWA and other Federal agencies. The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and shall be made a part of and physically incorporated into all Federal-aid contracts.

In the Form FHWA-1273, Section 1, "General," states:

"Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions."

FHWA's 1996 Project Review/Product Evaluation (PR/PE), for subcontracting, recommended that the Office of Local Programs (OLP) develop an ongoing contract compliance review program for monitoring prime contractor's certification. The review program would assure that the Federal requirements (Form FHWA-1273) is incorporated into all Federal-aid subcontracts and lower tier subcontracts. The review program would also assure that firms suspended or debarred from Federal-aid contracts are not able to continue to engage in working on Federal-aid projects through subcontracts. To comply with FHWA's recommendations this process review was undertaken.

B. Objective of Review

The object of this review was to assure that the Federal requirements (Form FHWA-1273) was incorporated into all Federal-aid subcontracts and lower tier subcontracts. Also, the review was to assure that firms suspended or debarred from Federal-aid contracts are not able to continue to engage in working on Federal-aid projects through subcontracts.

C. Review Approach

The selected local agencies (in Districts 5, 7 & 12) that implement Federal-aid construction projects were responsible for spot-checking their contractor's files to assure that Form FHWA-1273 was included in all subcontracts. The District Review Team members (Jerry Gibbs - District 5, Jim Kaufman - District 7 and Iraj Razavi - District 12) were responsible for determining which local agencies, in their district, did the reviews. Local agencies were only required to do a review on one of their projects. The Process Review Engineer (PRE), Rick Gifford notified the local agency that they had been selected to take part in the Subcontracting Process Review and provided instructions for completing the review. A goal of 20 local agencies and 75 subcontracts to review was established in the review plan. Nineteen local agencies and 84 subcontracts were reviewed:

These selected local agencies did check to see if the Form FHWA-1273 was physically incorporated into the subcontracts (number determined by the PRE) and completed a review form checklist (a sample review form is attached). If the Form FHWA-1273 was not physically incorporated into the subcontract, the local agency would be responsible for taking such necessary action to assure that the prime contractor and subcontractors comply with the contract requirements.

The local agencies agree to this responsibility when they enter into a master agreement with Caltrans. The master agreement requires the local agencies to assure that work performed on their Federal-aid projects is in conformance with all Federal rules and regulations.

In the subject review, the PRE used the local agencies' completed review forms to check prime contractors, subcontractors, and lower tier subcontractors (that were spot-checked by the local agencies) to assure none have not been suspended or debarred from working on Federal-aid contracts.

In the FHWA, R. C. Slovensky, Program Review/Project Evaluation, and Ray Okinaga, Program Coordinator, provided technical assistance to the PRE. Without this help, the process review would not have been possible.

D. Findings, Observations and Recommendations

Finding 1

Of the 19 local agency projects that were reviewed, five of the projects were found with the Form FHWA-1273 not included in the subcontracts. Of these five local agency projects, where the 1273 was not included in the subcontracts, two of the projects were with the same prime contractor. On one of the projects, the failure to include the Form FHWA-1273 was caused by the local agency not including the Form FHWA-1273 into the prime contract (The local agency executed a contract change order to correct their mistake). Attached is a summary table of the findings.

Observation 1

Most prime contractors have included Form FHWA-1273 in their subcontracts. Those that have not included the 1273, were more than willing to correct the deficiency once it was brought to their attention.

The problem, with the local agency not incorporating the 1273 form in their contracts, should be corrected with the issuance of LPP 97-03 "Revised PS&E Procedures." This LPP was issued because of deficiencies found during Process Review 96-01 "PS&E." Process Review 96-01 involved spot-checking local agency PS&E packages. Process Review 96-01 found several local agencies were not incorporating the Form FHWA-1273 and other Federal-aid required provisions in their contracts. LPP 97-03 included a revised PS&E checklist and a "boiler plate" of the required Federal-aid provisions.

Recommendation 1

FHWA recommended to continue this process review on an annual basis with different districts next year.

Finding 2

None of the prime contractors or subcontractors, involved in this process review, were found in U.S. General Services Administration "List of Parties Excluded From Federal Procurement and Nonprocurement Programs."

Observation 2

It appears that the prime contractors have fulfilled their responsibilities, and some research, on the subcontractors before hiring is being done. Also, the prime contractor certifying that they are not excluded from Federal-aid contracts has keep those excluded from bidding on Federal-aid contracts.

Recommendation 2

As recommended by FHWA, continue this process review on an annual basis with different districts next year being involved in the review.

Attachments (2)

Process Review 96-05
Subcontracting - Contract Compliance
Review Form

Project Locator No.: _____ Prefix: _____ Project No.: _____

Local Agency: _____

Project Location: _____

Type of Work: _____

Prime Contractor: _____

Address: _____

(1) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (1)'s subcontract: yes ☐ no ☐

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received ☐

If low tier subcontractor check here ☐

(2) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (2)'s subcontract: yes ☐ no ☐

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received ☐

If low tier subcontractor check here ☐

(3) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (3)'s subcontract: yes ☐ no ☐

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received ☐

If low tier subcontractor check here ☐

(4) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (4)'s subcontract: yes ☐ no ☐

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received ☐

If low tier subcontractor check here ☐

(5) Subcontractor: _____

Address: _____

FHWA Form 1273 physically was incorporated into (5)'s subcontract: yes ☐ no ☐

If "no" is checked above, then check here when the Letter of Commitment and a copy of the amended subcontract, with FHWA Form 1273 physically incorporated, is received ☐

If low tier subcontractor check here ☐

Prepared By: _____

Phone Number: _____

Note: Local agencies' names and numbers removed so as not to embarrass anyone.					
	Process Review 96-05 Construction Subcontracting				
	Summary of Findings				
	# of Subcontract of lower tier Local Agencies who Contractors that				
Local Agency	Federal-aid Project	Reviewed	subcontracted	did not include 1273	did not include 1273
District 5					
Local Agency	ERSTPL-1615(004)	12	0		
Local Agency	STPLHG-###(006)	2	0		
Local Agency	STPVLHS-####(8	1		
Local Agency	BROS-####(011)	3	0		
Local Agency	STPLE-####(003)	2	0	1	1
District 7					
Local Agency	STPLE-####(001)	3	0		
Local Agency	STPLP-####(050)	1	0		
Local Agency	DBL-####(006)	5	0		
Local Agency	CML-####(008)	1	0		
Local Agency	CML-####(008)	3	0		
Local Agency	STPL-####(001)	5	0		
Local Agency	STPL-####(001)	2	0		
Local Agency	STPLMA-####(00	2	0		
Local Agency	STPLZ-####(083)	5	0		
District 12					
Local Agency	STPLE-####(002)	2	0		1
Local Agency	STPLMA-####(02	5	1		1
Local Agency	STPL-####(036)	3	0		
Local Agency	STPLE-####(007)	3	0		1
Local Agency	STPL-####(012)	15	0		1
Total	19	82	2	1	5